

DEPARTMENT OF MARINE RESOURCES – SHELLFISH SANITATION

CHAPTER 21 – SHELLFISH RELAY

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DEPARTMENT OF MARINE RESOURCES

Chapter 21 – Shellfish Relay

21.01 Compliance

- A. It shall be unlawful for any person to relay shellfish without a permit issued by the Commissioner.
- B. Relay activities may be permitted only from growing areas classified as conditionally approved in the closed status, restricted, or conditionally restricted in the open status except for the relay of seed, as described in 2.95(A)(4) which does not require a permit. The relay of seed as described in Chapter 2.90(3)(C)(3) will not require a permit provided the seed is held in an area classified as approved or conditionally approved in the open status for a minimum of 6 months.
- C. The holder of a permit may only reduce bacterial levels of shellfish. A permit under this section shall not allow for the relaying of diseased shellfish or shellfish contaminated with any poisonous or deleterious substances.
- D. The relay operation shall be effectively supervised by the Department or other state authorized relay supervisor to assure that all the shellstock are actually relayed to harvest areas in the approved classification or in the open status of the conditionally approved classification to be sufficiently cleansed. Relay control procedures shall preclude any opportunity for shellstock to be inadvertently diverted to sale for human consumption before the natural cleansing process is completed. Controls must be applied to all phases of the operation including initial harvesting, transportation, replanting, the security of the shellstock during the cleansing period, and final harvesting for marketing.

Exception: Supervision of final harvesting for market will not be required when all the product on the relay site has been tested and released by the Commissioner.

- E. Any violation of this regulation and/or the terms of a permit or any other shellfish sanitation law may result in the suspension of the permit in accordance with 12 M.R.S.A. § 6373. Additional conditions may be added to a permit at the discretion of the Commissioner.

21.02 Definitions

- A. In addition to the definitions set forth in 1 M.R.S.A. §§71 and 72 and 12 M.R.S.A. §6001, the following definitions shall apply in interpretation of Chapter 21.
 - 1. “Classification of Growing Areas” means that the growing area has been subjected to a sanitary survey and shall be classified based on the twelve year sanitary survey, and its most recent triennial or annual reevaluation when available, as any one or combination of the following:
 - (a) Approved;
 - (b) Conditionally approved;
 - (c) Restricted;
 - (d) Conditionally Restricted;
 - (e) Prohibited.

Growing areas not subjected to a sanitary survey every twelve years shall be classified as prohibited. Growing areas which do not have a completed written triennial reevaluation report shall be placed in the closed status immediately.

2. "Conditionally approved" means a classification used to identify a growing area, which meets the criteria for the approved classification except under certain conditions described in a management plan. (Chapter 15.02(A)(16))
3. "Conditionally restricted" means a classification used to identify a growing area, which meets the criteria for the restricted classification except under certain conditions described in a management plan. (Chapter 15.02(A)(17))
4. "Container" means any bag, sack, tote, conveyance or other receptacle used for containing shellfish for holding or transporting.
5. "Growing area" means any site, which supports or could support the propagation of shellstock by natural or artificial means. (Chapter 15.02(A)(36))
6. "Relay Lots" means shellstock harvested from a defined, permitted area over a defined, permitted time period and delivered to the relay site. Also the same shellstock following completion of the relay treatment.
7. "Poisonous or deleterious substance" means a toxic substance occurring naturally or added to the environment for which a regulatory tolerance limit or action level has been established in shellfish to protect public health. (Chapter 15.02(A)(62))
8. "Prohibited" means a classification used to identify a growing area where the harvest of shellstock for any purpose, except depletion or gathering of seed for aquaculture, is not permitted. (Chapter 15.02(A)(70))
9. "Relay" means to transfer shellstock from a growing area classified as restricted, conditionally restricted, or conditionally approved in the closed status, to a growing area classified as approved or conditionally approved for the purpose of reducing pathogens as measured by the coliform indicator group or poisonous or deleterious substances that may be present in the shellstock by using the ambient environment as the treatment process.
10. "Relay Area" means an area designated by the Department for the purpose of natural biological cleansing of shellfish.
11. "Restricted" means a classification used to identify a growing area where harvesting shall be by special license and the shellstock, following harvest, is subjected to a suitable and effective treatment process through relaying or depuration. (Chapter 15.02(A)(75))
12. "Shellfish" means all species of:
 - (a) Clams, mussels, quahogs and oysters, whether:
 - (1) Shucked or in the shell;
 - (2) Fresh or frozen; and
 - (3) Whole or in part.
 - (b) Scallops in any form, except when the final product form is the adductor muscle only. (Chapter 15.02(A)(81))
13. "Shellstock" means live molluscan shellfish in the shell; and shellfish which have not been removed from their shells (12 MRSA §6001(42)).
14. "State Authorized Relay Supervisor" means a DMR staff member or an individual who has been trained and authorized by the DMR to oversee relay operations. The state authorized relay supervisor may be a local or state official or third party contractor, but must not be a direct employee of the permit holder, a licensed harvester, or a member of the families of the permit holder or the managers of the relay operation

21.03 Application for Relay Permit

- A. Relay permit applications will be reviewed and issued based on the applicant's ability to meet the criteria for safe relay operations and the availability of a state authorized relay supervisor for each relay harvest.
- B. Persons may apply in writing to the Department for a permit to relay.
<http://www.maine.gov/dmr/healthsafety.htm>
 Contact Information, unless otherwise noted, means the Department of Marine Resources (DMR), Director of Public Health, P.O. Box 8, West Boothbay Harbor, Maine 04575-0008; telephone: (207) 633-9500; fax: (207) 633-9579.
- C. The written application must include:
 - 1. The name, address, telephone number, fax or email address of the applicant.
 - 2. A map indicating the exact location (including GPS coordinates) of the growing area in the conditionally approved in the closed status, restricted, or conditionally restricted in the open status classification from which relaying is to take place.
 - 3. A map indicating the exact location (including GPS coordinates) of the relay area.
 - 4. A description of the relay activities to take place which will include:
 - (a) an approximate amount and the species of shellfish to be harvested;
 - (b) the projected time period during which the relaying may occur; and
 - (c) when container relaying is used, the system of container identification necessary to locate and avoid re-harvesting of shellfish from containers that have not been left in place long enough for sufficient cleansing.
 - 5. The name, phone number and address of a proposed third-party representative to supervise the relay operation, or a request for DMR personnel to supervise the operation.

21.04 Harvesting

- A. A state authorized relay supervisor(s) shall be designated.
- B. The state authorized relay supervisor must monitor the activities of the relay operation and keep accurate records in accordance with Chapter 21.04 (D). During relay activities, all harvest crew members must remain in the same area. The authorized relay supervisor shall be present when product is moved to the relay site.
- C. The state authorized relay supervisor must maintain a relay activity log on forms supplied by the Department which includes, but is not limited to, the date of relay, area harvested, number of harvesters, names of all relay harvest crewmembers and their valid shellfish harvester's license number, the quantity of shellfish relayed, whether it is broadcast or container relay (number of containers) and if transported, the number of the seal used to lock the truck. One copy must go with the vehicle, one copy must be maintained by the relay permit holder and one copy is maintained by the Department. The records must be kept for 2 years.
 - 1. All harvesters shall hold valid shellfish licenses as specified in 12 M.R.S.A. §6601.
 - 2. Any harvesting violation may nullify and void the permit.

3. Once a permit is issued, the permit holder must notify the local Marine Patrol Division Office no less than 24 hours prior to the commencement of harvesting. Any change in harvesting plans must be preceded by a minimum of 12 hours notice given to the Marine Patrol during normal business hours the preceding day.
- D. A state authorized relay supervisor is not required if an alternative monitoring mechanism is approved by the DMR.
- E. In the case of shellfish to be relayed interstate, a memorandum of understanding (MOU) shall be developed between the participating state shellfish control agencies regarding the particular control measures.

21.05 Relay Area and Procedures

- A. Relay areas shall meet the following design, operating and marking requirements:
 1. Waters to which shellfish have been relayed must have an average daily temperature $\geq 50^{\circ}\text{F}$. Relayed shellfish shall remain in the relay area at temperatures $\geq 50^{\circ}\text{F}$ for a period for not less than 14 days from the time the last shellfish are relayed, except as described in Chapter 21.05(B).
 2. The relay area shall be no closer than 10 meters (32.8 feet) from harvestable shellfish resources. Relayed shellfish that are broadcast on the bottom (no containers) shall be placed in accordance with permit conditions designed to avoid movement of contaminated product out of the relay area.
 3. Growing areas with relayed shellstock that are broadcast on the bottom (no containers) shall remain in the closed status until all relayed lots are authorized by the Commissioner for release.
 4. If shellstock are relayed in containers:
 - (a) The containers shall be designed and constructed so that they allow free flow of water to the shellstock;
 - (b) The containers shall be located so as to assure the contaminant reduction required in Chapter 21.05(B)(1) are met; and
 - (c) The shellstock must be washed and culled prior to placement in the containers.
 5. Relay areas shall be marked at a minimum of four (4) corners with a device per corner which displays the permit number in letters and numbers of at least 2 inches in height in colors contrasting to the background color of the device. The perimeters of the surfaces of the device shall be marked by reflective tape. In cases where the boundary line exceeds 100 yards, additional devices shall be displayed so as to clearly show the boundary line of the relay area. In situations where the topography or distance of the boundary interrupts the line of sight from one marker to the next, additional marked floating devices shall be displayed so as to maintain a continuous line of sight. Should these marking requirements be impractical or insufficient the Commissioner may set forth alternative marking requirements on a case by case basis in the conditions of the relay permit.
 6. Relay areas must be marked in accordance with the United State's Coast Guard's Aids to Private Navigation standards and requirements.
- B. Treatment procedures
 1. The relay treatment time period shall be at least 14 consecutive days when environmental conditions are suitable for shellfish feeding and cleansing. Shorter time periods may be

permitted at some locations or during some periods of the year if there is an adequate study to support the reduced time frame and there is intensive monitoring during the process. Longer periods may be required if environmental conditions are not optimum.

2. When container relaying is used and the Department allows a treatment time of less than 14 days, the Commissioner shall require more intensive sampling including:
 - (a) Product sampling before and after relay, and
 - (b) Monitoring of critical environmental parameters such as temperature and salinity.
3. Relay testing may be eliminated if the treatment period exceeds 60 days.
- C. The lease, LPA or site that lots are relayed to will be closed by regulation pursuant to Chapter 95 and 96. Treatment timing begins when permit conditions are met, including marking.

21.06 Product Sampling and Release

- A. The entire amount of relayed shellfish constitutes a lot. A harvest lot is all of the shellfish harvested from a particular area at a particular time.
- B. One shellstock and one water sample will be collected from each lot on the zero hour harvest day. One shellstock sample and one water sample will be collected from the relay site at the end of the treatment time to determine the effectiveness of the relay process. The final sample must be acceptable in order to release for market.

An acceptable sample is one which contains less than or equal to 230 Most Probable Number (MPN) fecal coliform per 100 grams of shellfish meat.

- C. Relayed shellfish shall not be released from a relay area without written permission from the Commissioner and the area must be open by regulations pursuant to Chapter 95 and 96.

21.07 Transportation and Delivery of Shellfish for Relay

All shellfish harvested for the purposes of relay, which are to be transported over land, must be placed into a vehicle that conforms to the requirements of Chapter 16.23 and the vehicle must be sealed immediately by the state authorized relay supervisor. Unless otherwise authorized by the Department, all shellfish harvested must be transported directly to the relay site immediately after harvesting operations are completed.

- A. The vehicles must be sealed with state seals issued by the Department. The state authorized relay supervisor must record the seal number on the relay activity log and the time the shellfish were placed in the vehicle.
- B. The seal can only be removed under the direct supervision of a state authorized relay supervisor. When the seal is removed, the number must be confirmed and signed and dated on the relay activity log. The relay activity log must contain a record of each lot of shellfish; amount, seal number associated with the lot, the time/date the lot arrived at the relay site and the time the seal was removed from the vehicle at the site. If the seal number is not confirmed or there is evidence of tampering, the marine patrol must be notified immediately.

21.08 State Seals

It shall be unlawful for any person, other than a state authorized relay supervisor or a Maine Marine Patrol Officer to possess state seals. It is unlawful for any person to break the state seal except for a Maine Marine Patrol officer or a state authorized relay supervisor.

21.09 Record Keeping

Relay and sales records shall be maintained by each relay permit holder and must meet the following criteria:

1. Each permit holder shall have a business address at which records are maintained
2. Records shall:
 - (a) Be complete, accurate and legible;
 - (b) Contain all of the Department's required information in a form authorized by the Department; and
3. The records must be sufficient to document;
 - (a) Specific dates on which the shellstock is harvested, deposited for treatment and harvested again;
 - (b) A container of shellfish so that the container can be traced back to the specific relay lot of shellfish from which it was taken; and
 - (c) Identify the buyer and quantity of shellstock purchased
4. Records shall be maintained in a permanently bound ledger book or other recording method approved by the Department, and shall be available for Department inspection upon request.
5. The records shall be retained for a minimum of two (2) years.

CHAPTER 21

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EFFECTIVE DATE:

October 2, 1994

May 26, 2008 – Repealed and Replaced